TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 38

DOMINIC PALMER, PETITIONER,

vs.

STANLEY P. ASHE, WARDEN, WESTERN STATE PENITENTIARY, PITTSBURGH, PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED DECEMBER 8, 1950.

CERTIORARI GRANTED APRIL 30, 1951.

SUPREME COURT OF THE UNITED STATES

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[fols. 1-2]

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

No. 426 January Term, 1950

COMMONWEALTH OF PENNSYLVANIA ex rel. DOMINIC PALMER

vs.

STANLEY P. ASHE, Warden Western State Penitentiary,
Pittsburgh, Pennsylvania

APPEARANCE DOCKET ENTRY

October 11, 1949, Rule for Writ of Habeas Corpus. Petition and Affidavit filed. October 11, 1949, Petition ordered filed and a Rule granted on Stanley P. Ashe, Warden Western State Penitentiary and the District Attorney of Allegheny County, Pennsylvania, to show cause why a Writ of habeas corpus should not issue, Rule returnable to October 20, 1949. December 8, 1949, Answer of Stanley P. Ashe, Warden, filed. December 8, 1949, Answer of William S. Rahauser. December 8, 1949, After due consideration of the petition and record in this case, the Petition for a Writ of Habeas Corpus is dismissed and the Writ is denied. The Prothonotary us directed to mail a copy of this Opinion and Order of Court to the Petitioner, to Stanley P. Ashe, Warden, and to the District Attorney of Allegheny County. All costs to be paid by the County of Allegheny. Eodie exception noted to petitioner and Bill sealed. Eodie Opinion filed. April 10, 1950, Certiorari in Appeal Exparte Dominic Palmer to Superior Court filed.

[fol. 3] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

[Title omitted]

ORDER OF COURT—Filed October 11, 1949

October 11th, 1949, the within petition is ordered filed and a rule is hereby granted on Stanley P. Ashe, Warden, Western State Penitentiary, and the District Attorney of Allegheny County, Pennsylvania, to show cause why a writ of habeas corpus should not issue; rule returnable to October 20, 1949.

By the Court, H. R., President Judge.

[fol. 4] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

No. —, — Term, 1949

COMMONWEALTH OF PENNSYLVANIA EX REL. DOMINIC PALMER

vs.

STANLEY P. ASHE, Warden Western State Penitentiary

PETITION FOR WRIT OF HABEAS CORPUS—Filed October 11, 1949

To the Honorable, the Judges of the said Court:

The Petition of Dominic Palmer respectfully represents:—

First: That under the date of February 18, 1931, he was sentenced to imprisonment of not less than ten (10) years nor more than thirty (30) years in the Western State Penitentiary at No. 23 and 24 January Sessions, 1931, in the Court of Oyer and Terminer of Allegheny County, Pennsylvania; the record of said proceeding, by reference thereto, being made a part hereof.

Second: Your petitioner, a young irresponsible boy, having spent several years in Polk (because he was mentally abnormal), as well as several years in Morganza, and after being taken in custody by the police authorities of the City of Pittsburgh on December 20, 1930, was confined in No. 6 Police Station on Broad Street, Pittsburgh, and on Decem-

ber 21, 1930, he was taken from said Police Station to the Allegheny County Jail.

Third: Your petitioner was then taken from the said County Jail to a courtroom, where the District Attorney informed the Court, that "the defendant wishes to plead [fol. 5] guilty" and in the matter of a minute, more or less, the for-going sentence was entered after he answered "Yes." to the Court's query, "Do you plead guilty to this charge?"

Fourth: Your petitioner was advised by the police authorities, when he was taken in custody, that the charge against him was breaking and entering the Leaders Dry Goods Store on Frankstown Avenue.

Fifth: At no time, either before he answered the court's query, or at the time the aforesaid sentence was entered, was your petitioner aware of the fact that he was being held to a charge of Robbery, and he, in fact, did not know that he was being so held until he was in the Western State Penitentiary being examined by the Psychology Department of this institution.

Sixth: Your petitioner had no reason to suppose that he personally was being held to a charge of Robbery, inasmuch as he was advised at the time of his hearing before Magistrate Papale, that the charge against him was breaking and entering, and at no time thereafter was he advised or apprised of any other charge against him until he was already in the penitentiary as aforesaid.

Seventh: At no time during all the proceedings in this case, either while your petitioner was confined in jail or while he was in Court as aforesaid, was he shown the Bills of Indictment being used in this case or was the said Bills of Indictment read to him.

Eighth: Your petitioner was not represented by counsel, nor offered counsel, or advised of his right to have counsel, [fol. 6] and he expressly claims that the trial Court lacked due process of law under the Fourteenth Amendment to the Constitution of the United States.

Uveges v. Pennsylvania, — U. S. —;
Townsend v. Burke, — U. S. —.

Ninth: Your petitioner was released on parole on September 19, 1947; and on April 1, 1949, he was returned to the penitentiary for no other reason than because he lacked a place of employment.

Tenth: The record of his commitment is illegal for the following reasons:

1. It shows that he pled guilty to an unnamed, unspecified charge . . . all of which is unconstitutional.
2. It shows that his plea to an unspecified charge was illegally appropriated to other indictments which he did not then, and does not now admit.
3. It shows that he was denied his constitutional right, in that he was not permitted to learn "the nature of the accusation against him" either before a Magistrate or in the Courtroom.
4. It shows that he was denied his constitutional right, in that he was neither permitted to "face his accuser" in a Magistrate's Office or in the Courtroom.
5. It does not contain any written authentic plea or any waiver of trial by jury.
6. The Court's sentence is excessive.

Wherefore, your petitioner prays your Honorable Court direct the issuance of a Writ of Habeas Corpus directed to Stanley P. Ashe, Warden of the Western State Penitentiary, or to such person in charge of said institution and in whose custody your petitioner may be found, that cause be shown, if any exist, why he should not be discharged and set free, making said Writ returnable forthwith.

[fols. 7-8]

And he will ever pray, etc.

Dominic Palmer, Petitioner.

Duly sworn to by Dominic Palmer. Jurat omitted in printing.

[fol. 9] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYIVANIA

[Title omitted]

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS—Filed December 8, 1949

To the Honorable, the Judges of said Court:

And now comes Stanley P. Ashe, Warden of the Western State Penitentiary, respondent above named, and admits that Dominic Palmer is being confined and restrained of his

liberty in the Western State Penitentiary, but in answer hereto states as follows:

(1) That the said Dominic Palmer was received at the Western State Penitentiary on February 20, 1931, under sentences imposed on February 18, 1931 by Honorable George V. Moore in the Court of Oyer and Terminer of Allegheny County as follows:

(A) No. 24 January term 1931—Attempted robbery—5 to 15 years; sentence to be effective from February 18, 1931.

(B) No. 23 January term 1931—Robbery—5 to 15 years; this sentence to begin and take effect at the expiration of the sentence imposed at No. 24 January term 1931.

(2) That because of his criminal and institutional records and other facts in his case, parole on his first bill of indictment (O&T #24 January term 1931, the minimum of which expired on February 18, 1936) was refused until August 26, 1942 at which time he was granted parole by the Pennsylvania Board of Parole in order to permit him to begin serving the sentence imposed on him at O&T #23 January term 1931.

(3) That the said Dominic Palmer was granted parole by the Pennsylvania Board of Parole on his second and final bill of indictment (O&T #23 January term 1931) on or after August 26, 1947 subject to a parole plan acceptable to the Board; such a plan was approved by the Board of Parole and he was released on parole on September 19, 1947.

[fols. 10-11] (4) On April 1, 1949 the said Dominic Palmer was returned here as a violator of parole rules after he had been declared delinquent by the Board of Parole, he being taken into custody on March 7, 1949. He was not penalized for time spent on parole, being given full credit for that period. His maximum sentence will expire on August 26, 1957.

(5) According to the records compiled by the Identification Department of this institution, the said Dominic Palmer was born on December 18, 1909 and his prior criminal history is as follows:

1916. St. Paul's Orphanage, Pgh. Pa., Taken out by father after 1 year.

8-12-18. Polk St. Sch., Polk, Pa., Imbecile, indeterminate; released 9-10-20.

10-31-21. THS, Warrendale, Pa., Larceny, indeterminate; paroled 4-14-24, ret'd 6-30-24 (delinquent and larceny); discharged 6-1-26.

7-21-27. PTS, Morganza, Pa., Breaking and Entering, indeterminate, served 2½ years, paroled, returned for parole violation 8-4-30; discharged 12-18-30.

So answers:

S. P. Ashe, Warden of the Western State Penitentiary.

[fol. 12] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

[Title omitted]

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS—Filed December 8, 1949

And now comes William S. Rahauser, District Attorney of Allegheny County, Pennsylvania, by Leonard H. Levenson, Assistant District Attorney, and answers as follows the rule to show cause issued by the Court in the above captioned matter on October 10, 1949.

First: On the 18th day of February, 1931, in the Court of Oyer and Terminer of Allegheny County, Pennsylvania, the relator was sentenced at No. 24 O & T January Sessions, 1931, on a charge of Attempted Armed Robbery, to a term of imprisonment in the Western State Penitentiary of not less than five years or more than fifteen years.

Second: On the said 18th day of February, 1931, in the Court of Oyer and Terminer of Allegheny County, Pennsylvania, the relator was sentenced at No. 23 O & T January Sessions, 1931, on a charge of Armed Robbery, to a term of imprisonment in the Western State Penitentiary of not less than five years or more than fifteen years, to begin at the expiration of the sentence at No. 24 O & T January Sessions, 1931.

Third: The above sentences were imposed by the Court following the entry of pleas of guilty by the relator in open court to true bills returned by the Grand Jury of Allegheny County at the respective numbers and terms.

Argument

Relator's contentions are summarized in Paragraph Tenth of his petition. These contentions are set forth in [fol. 13] the relator's own language and discussed separately below:

1. Relator's first contention is,

> "It shows that he pled guilty to an unnamed, unspecified charge . . . all of which is unconstitutional."

The records filed in the Office of the Clerk of Courts of Allegheny County, Pennsylvania, at Nos. 23 and 24 O & T January Sessions, 1931, clearly indicate that the relator entered a plea of guilty to specific charges. At No. 23 January Sessions, 1931, the indictment to which the relator pleaded guilty charged him with having committed the offense of armed robbery by having, on December 18, 1930,

> ". . . being then and there armed with offensive weapons, to-wit: revolvers, with force and arms, in and upon one David Brinn feloniously did make an assault, and did then and there feloniously beat, strike and ill use the said David Brinn and do violence to said David Brinn with intent then and there to feloniously rob the said David Brinn of the sum of twenty dollars, lawful money of the Government of the United States of the goods, moneys, chattels and property of the said David Brinn, from the person of the said David Brinn, feloniously did rob, seize, steal, take and carry away, contrary to the form of the Act of General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania."

At No. 24 O & T January Sessions, 1931, the indictment to which the relator pleaded guilty charged him with the offense of attempted armed robbery, by having, on December 18, 1930,

> ". . . being then and there armed with offensive weapons, to-wit: revolvers, with force and arms, in and upon one Peter Rosella feloniously did make and assault, and did then and there feloniously beat, strike and ill use the said Peter Rosella and do violence to said Peter Rosella with intent then and there to feloni-

ously rob the said Peter Rosella contrary to the form of the Act of General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania."

Relator's second contention is,

"It shows that his plea to an unspecified charge was illegally appropriated to other indictments which he did not then, and does not now admit."

The Court records clearly show that the relator did not plead guilty to unspecified charges, but pleaded guilty to [fol. 14] the indictments set forth above, and that his plea of guilty to each indictment was duly endorsed on the back of each indictment by the court clerk.

3. Relator's third contention is,

"It shows that he was denied his constitutional right, in that he was not permitted to learn the 'nature of the accusation against him' either before a Magistrate or in the Courtroom."

The records of the Clerk of Courts of Allegheny County, Pennsylvania, filed at Nos. 23 and 24 January Sessions, 1931, show that in Information No. 7436 of 1931, Bernard Kirley, Police Inspector of the City of Pittsburgh, on the 22nd day of December, 1930, appeared before Charles F. Papale, Police Magistrate and, under oath, charged that on the 18th day of December, 1930, the relator and others,

". . . did then and there on the above day and date unlawfully and feloniously assault one David Brinn owner of a grocery store situated at 5701 Hays Street, City of Pittsburgh, County aforesaid, defendants being then and there armed with revolvers, deadly weapons, with the felonious intent in so doing to rob and steal the goods and chattles from his person and said defendant did then and there rob and steal Twenty Dollars ($20.00) from the cash register of the said grocery store of David Brinn, lawful money of the United States, all the property of the said David Brinn."

The Information charged further that,

"December 18, 1930, defendants aforesaid did then and there on the above day and date unlawfully and

feloniously assault on Peter Rosella, owner of a grocery store situated at 6361 Dean Street, City of Pittsburgh, County aforesaid, defendants being then and there armed with revolvers, deadly weapons, with the felonious intent in so doing to rob and steal the goods and chattles from his person."

4. Relator's fourth contention is,

"It shows that he was denied his constitutional right, in that he was neither permitted to 'face his accuser' in a Magistrates Office or in the Courtroom."

The transcript of the Magistrate's docket shows that a [fol. 15] hearing was held before the Magistrate on the 23rd day of December, 1930, at 9:00 A. M. at which the relator appeared, and at which the following witnesses for the Commonwealth were produced, sworn, and examined: David Brinn, Peter Rosella, William Ruppert and John Bradley. The records of the Clerk of Courts of Allegheny County, Pennsylvania, further show that on February 18, 1931 at Nos. 23 and 24 O & T January Sessions, 1931 in the case of Commonwealth v. Dominick Palmer, et al., the following witnesses for the Commonwealth appeared against the relator: W. H. Rose, John Hickey, John Barrett and Edward Kilpatrick.

5. Relator's fifth contention is,

"It does not contain any written authentic plea or any waiver of trial by jury."

The indictments at Nos. 23 and 24 O & T January Sessions, 1931 each contain the following endorsement: "January 16, 1931. Defendant pleads guilty as to Dominic Palmer". The relator, by pleading guilty, waived a trial by jury by removing any issue to be triad by a jury.

6. Relator's sixth contention is,

"The Court's sentence is excessive."

Relator does not indicate wherein he believes the sentence to be excessive. The maximum sentence on the charge of Armed Robbery is twenty years. Relator was given a sentence of five to fifteen years on each offense to run consecutively.

7. Relator further avers in his petition that he was a "young, irresponsible boy", at the time of his sentence and

did not comprehend the nature of the proceedings, thereby to bring himself within the scope of *Uveges v. Pennsylvania* 335 U. S. 437, 69 S. Ct. 184, 91 L. ed. 152. The relator, at the time of his plea of guilty and sentence was twenty-two years old, and hardly a young boy. As to his lack of ex- [fol. 16] perience in criminal proceedings, the records at the Western Penitentiary show that the relator was committed to the Thorn Hill School at Warrendale on a charge of larceny on October 31, 1931, that he was paroled on April 14, 1924, and recommitted for larceny and delinquency on June 30, 1924, and discharged on June 1, 1926. On July 21, 1947, relator was committed to the Pennsylvania Training School in Morganza, Pennsylvania for breaking and entering and was paroled after serving two and one-half years. On August 4, 1930, he was returned to Morganza for parole violation and discharged on December 18, 1930. It may be noted that the offenses for which the relator is now under sentence were committed on December 18, 1930, the very day he was discharged from Morganza.

Wherefore, respondent respectfully submits that the relator is being detained in the Western State Penitentiary pursuant to the unexpired lawfully imposed sentences at No. 23 O & T 1931, and, therefore, that the prayer of relator's petitions should be denied.

And he will ever pray.

William S. Rahauser, District Attorney; Leonard H. Levenson, Assistant District Attorney.

[fols. 17-18] *Duly sworn to by Leonard H. Levenson. Jurat omitted in printing.*

[fol. 19] In the Court of Common Pleas of Allegheny County, Pennsylvania

[Title omitted]

Opinion—Filed December 8, 1949.

Rowland, P. J.:

This matter comes before the court on petition of the relator who is an inmate of the Western State Penitentiary, having been sentenced by the Court of Oyer & Terminer of Allegheny County on charges of Armed Robbery and At-

tempted Armed Robbery. The petition was received through the mail. It was ordered filed and a rule was granted on the Warden of the Western State Penitentiary and the District Attorney of Allegheny County to show cause why the writ should not issue. Answers have been made thereto.

Relator alleges that he was advised when he was taken into custody that the charge against him was breaking and entering and that he did not understand that he was pleading guilty to armed robbery. He also contends that "he pled guilty to an unnamed, unspecified charge"; that he was denied the right to learn the nature of the charge against him and was not permitted to face his accuser either in [fol. 20] the Magistrate's Office or in the Court room; that the record does not contain any written plea or waiver of trial by jury; and that the sentence is excessive.

We have the original record before us and can find no merit in relator's contentions. The records show that there was a hearing before a police magistrate of the City of Pittsburgh at which relator was present and witnesses appeared against him. He was indicted by the Grand Jury and he pleaded guilty to these indictments. This was a substantial waiver of trial by jury, as the plea removed any issue to be tried by a jury. The indictments set forth fully the charges against him and are regular on the face thereof.

We cannot agree that the sentence is excessive. The maximum penalty for armed robbery is twenty years. The relator was sentenced to not less than five nor more than fifteen years on each of the two indictments, or a total of ten to thirty years.

Relator further avers that he was "a young, irresponsible boy" who did not comprehend the nature of the proceedings and that he did not have counsel, thus bringing himself within the scope of *Uveges* vs. *Pennsylvania*, 355 U. S. 437. We do not believe that he was as ignorant of criminal proceedings as he now claims. The answer of the Warden shows that at the time of his commitment he was past twenty-one years of age and had been in trouble before. It will be noted that on July 21, 1927 (at which time he was about 18 years old) he was committed to the Pennsylvania Training School at Morganza for breaking [fol. 21] and entering and was paroled after serving two

and one-half years. On August 4, 1930 he was returned to Morganza for parole violation and discharged on December 18, 1930. It will also be noted that the offenses for which relator is now under sentence were committed *the same day*, to wit, December 18, 1930. From the answer of the Warden is appears that "because of his criminal and institutional records and other facts in his case, parole on his first bill of indictment (O&T #24 January Term, 1931, the minimum of which expired on February 18, 1936) was refused until August 26, 1942, at which time he was granted parole by the Pennsylvania Board of Parole in order to permit him to begin serving the sentence imposed on him at O&T #23 January Term 1931." It also appears from the answer of the Warden that relator was paroled on the second indictment on September 19, 1947 and was returned to that institution on April 1, 1949 as a parole violator. He was not penalized for the time spent on parole, being given full credit for that period.

In any event, we do not believe there was any obligation on the court to provide counsel for the relator. In *Commonwealth ex rel. McGlinn* vs. *Smith*, 344 Pa. 41 Mr. Justice Maxey, now Chief Justice, said (p. 48):

> "This court has never countenanced the idea that the accused in a criminal case when the charge is other than murder is being deprived of a constitutional right if he is not informed in advance of his trial that counsel will be assigned him upon request."

And, as stated in *Commonwealth ex rel. Townsend* vs. *Burke*, 361 Pa. 35, the Supreme Court of the United States has held that "the due process clause of the Fourteenth Amendment does not prohibit a State from accepting a plea [fols 22-23] of guilty in a non-capital case from an uncounseled defendant."

We have carefully read the petition, the answers filed and the record in this case and are of the opinion that relator has failed to show probable cause for his deliverance from custody. The writ will therefore be denied.

ORDER OF COURT.

December 8th, 1949, after due consideration of the petition and the record in this case, the Petition for Writ of Habeas Corpus is dismissed and the Writ is denied.

The Prothonotary is directed to mail a copy of this opinion and order of court to the Petitioner, to Stanley P. Ashe, Warden of the Western State Penitentiary, and to the District Attorney of Allegheny County. All costs to be paid by the County of Allegheny.

By the Court, Rowand, P. J.

Eo die, exception noted to the Petitioner, and bill sealed.
Harry H. Rowand, P. J., President Judge. (Seal.)

[fol. 24] In Superior Court of Pennsylvania

Writ of Certiorari and Return—Filed in County Court April 10, 1950 and Superior Court April 11, 1950

The Superior Court of Pennsylvania,
Sitting at Pittsburgh, ss:

The Commonwealth of Pennsylvania: To the Judges of the Court of Common Pleas for the County of Allegheny, Greeting:

We being willing for certain causes to be certified of the matter of the Appeal of Dominic Palmer from the order and decree of your said Court at No. 426 January Term, 1950-B wherein Commonwealth of Pennsylvania ex rel. Dominic Palmer is plaintiff and Stanley P. Ashe, Warden, Western State Penitentiary, is defendant, before you or some of you, depending, do command you, that the record and proceedings aforesaid with all things touching the same, before the Judges of our Superior Court of Pennsylvania, at a Superior Court to be holden at Pittsburgh, on the second Monday of April, 1950, so full and entire as in your Court before you they remain, you certify and send, together with this Writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable Chester H. Rhodes, Doctor of Laws, President Judge of our said Superior Court, at Pittsburgh, the 21st day of January in the year of our Lord one thousand nine hundred and fifty.

Charles H. McKibben, Prothonotary.

[fol. 24a] To the Honorable the Judges of the Superior Court of Pennsylvania, sitting at Pittsburgh:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

(L.S.) Frank P. Patterson, P.J. (L.S.) for H. H. Rowand, resigned.

[File endorsement omitted.]

[fol. 25] In the Superior Court of Pennsylvania, April Term, 1950

No. 58

Commonwealth of Pennsylvania ex rel. Dominic Palmer, Appellant,

v.

Stanley P. Ashe, Warden, Western State Penitentiary

Appeal from the Order of the Court of Common Pleas of Allegheny County at No. 426, January Term, 1950

No. 261

Per Curiam—Filed July 20, 1950

Relator in this habeas corpus proceeding has appealed from the order of the Court of Common Pleas of Allegheny County dismissing his petition and refusing a writ of habeas corpus.

On December 18, 1930, relator was released from the Pennsylvania Training School at Morganza, where he had been committed on July 21, 1927, for breaking and entering. He had been released from Polk State School, a mental institution, on September 10, 1920. He was committed to Thorn Hill School for larceny on October 31, 1921; after being paroled and returned, he was finally discharged on June 1, 1926. On January 9, 1931, he was indicted by a grand jury in Allegheny County on two bills of indictment: (1) Armed robbery, No. 23, January Sessions, 1931; (2) attempted armed robbery, No. 24, January Sessions, 1931.

[fol. 26] The offenses for which relator was indicted were committed on the same day of his discharge from Morganza. At the hearing before the magistrate on December 22, 1930, four witnesses for the Commonwealth appeared and testified to the commission of the crimes with which he was charged and for which he was subsequently indicted. On January 16, 1931, relator pleaded guilty in the Court of Oyer and Terminer of Allegheny County to the two bills of indictment. Entry of the pleas was noted on the indictments. The court imposed a sentence of not less than five years nor more than fifteen years in the Western State Penitentiary upon each bill, the sentence on bill No. 23 to begin at the expiration of the sentence on bill No. 24. It does not appear that relator had counsel at the time of entry of pleas and when sentenced.

Relator was released on parole from the penitentiary on September 19, 1947, and returned as a violator of parole rules on April 1, 1949. He has been given credit for that period while on parole. His maximum sentence will expire on August 26, 1957, as the result of previous action by the Pennsylvania Parole Board.

On October 11, 1949, relator filed in the Court of Common Pleas of Allegheny County his petition for writ of habeas corpus. He averred therein that his commitment was illegal for the following reasons: (1) That he pleaded guilty to an unspecified charge; (2) that his plea was illegally appropriated to other indictments; (3) that he was not permitted to learn the nature of the accusation against him; (4) that he was not permitted to face his accuser in a "magistrate's office or in the court room"; (5) that his plea contained no waiver of trial by a jury; (6) that the court's sentence was excessive.

[fol. 27] In addition thereto he averred in his petition that he was a "young irresponsible" boy, confined at one time because he was mentally abnormal; and that he was not represented by counsel or offered counsel or advised of his right to have counsel.

The first four averments are contradictory of the original record and are devoid of merit. Relator had a hearing before a magistrate of the City of Pittsburgh where he appeared and was confronted with Commonwealth witnesses. The true bills found by the grand jury were based upon the charges made in the information before the magistrate. The

pleas of guilty by relator were made in open court and entered on the bills of indictment. See Com. ex rel. Murray v. Ashe, 149 Pa. Superior Ct. 22, 26 A. 2d 217. There is no merit in relator's fifth and sixth contentions. Having pleaded guilty there was no trial, and the right to confront his accusers was not involved. The extent of the sentence was for the trial judge, and subject to the limitations prescribed by statute and ir the absence of arbitrary or capricious action the matter is within his discretion.

Relator at the time of the entry of his pleas and the imposition of sentence was past twenty-one years of age, having a criminal and institutional record. It was ten years prior to his present commitment that he had been released from the state institution at Polk. Relator in his petition makes no averment that he was impaired mentally at the time of the entry of his pleas on February 18, 1931, or that he is now suffering any mental disability. See Com. ex rel. Smith v. Ashe, 364 Pa. 93, 112, 71 A. 2d 107. His present mental capacity is indicated by his signed affidavit to the comprehensive and legalistic brief filed in this Court, [fol. 28] wherein he said "that he has read same [the brief] and knows the contents thereof."

The record does not disclose that the relator was overreached by the prosecution or prejudiced by the action of the trial court. Lack of counsel was not a denial of due process. Com. ex rel. Townsend v. Burke, 361 Pa. 35, 39, 63 A. 2d 77; Com. ex rel. Hovis v. Ashe, 165 Pa. Superior Ct. 30, 67 A. 2d 770.

The writ of habeas corpus should be allowed only when the court is satisfied that the petitioner has probable cause to be delivered. Com. ex rel. McGlinn v. Smith, 344 Pa. 41, 47, 24 A. 2d 1. On the present record the court below properly refused the writ.

The order is affirmed.

[fol. 29] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 30] IN SUPERIOR COURT OF PENNSYLVANIA

RETURN—Filed in County Court August 1, 1950

THE SUPERIOR COURT OF PENNSYLVANIA,
County of Allegheny, ss:

The Commonwealth of Pennsylvania to the Judges of the Court of Common Pleas for the County of Allegheny, Greeting:

Whereas, By virtue of our Writ of Certiorari at No. 58 of April Term, 1950 of our Court, a record in the matter of the appeal of Dominic Palmer from the order and decree of your said Court at No. 426 January Term, 1950B was brought into our Superior Court and the said cause was there so proceeded in that on the 20th day of July A. D. 1950 the following decision was rendered, viz:

The order is affirmed.

Per Curiam.

Wherefore, We hereby remit you the record aforesaid with the proceedings thereon, and all things touching the same so far as in this Court they remain, for the purpose of execution as to justice shall appertain, in accordance with the decision of our said Superior Court as aforesaid.

Witness the Honorable Chester H. Rhodes, Doctor of Laws, President Judge of our said Superior Court at Pittsburgh, the first day of August in the year of our Lord one thousand nine hundred and fifty.

Charles H. McKibben, Prothonotary.

[fol. 31] IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

No. 1726 A. Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA EX RELATIONE DOMINIC PALMER

STANLEY P. ASHE, WARDEN, State Penitentiary, Western District of Pennsylvania

PETITION FOR ALLOWANCE OF APPEAL—Filed September 8, 1950

From The Order Of The Superior Court of Pennsylvania As Of No. 58 April Term, 1950 Affirming Order Of Court Of Common Pleas of Allegheny County, Discharging Rule To Show Cause And Refusing Writ Of Habeas Corpus.

Resubmission of Petition and Brief

[fol. 32] The Petitioner, Dominic Palmer, is a citizen of the United States and the Commonwealth of Pennsylvania.

He is 40 years of age and is confined in the Western State Penitentiary under two consecutive five to fifteen year sentences imposed on February 18, 1931, at No. 23 and 24 January Sessions, 1931, in the Court of Oyer and Terminer of Allegheny County.

Palmer's Petition for a Writ of Habeas Corpus, sworn to before a Notary Public and mailed to the Court on June 4, 1949, emphatically denies that he ever pled guilty to the charges set forth at No. 23 and 24 January Sessions, 1931, and alleges the denial of his constitutional rights and expressly claims that the action of the trial court lacked due process of law under the Fourteenth Amendment.

Your petitioner, not being represented by counsel and being under duress, resubmits his petition and brief for this Honorable Court's consideration, but he is unable to furnish copies of the respondents because he has not received copies, nor has he ever been permitted to examine them as provided by law.

Your petitioner believes that the opinion of the Superior Court attached hereto and filed on July 20, 1950, is based on false premises and is so unjust as to be contrary to law for the following reasons:

(a) It states that "before a magistrate on December 22, 1930, four witnesses for the Commonwealth testified

to the commission of the crime . . .'' whereas, your petitioner alleges that he was not present at said hearing because he was confined in the County Jail from December 21, 1930, until he was brought to court.

(b) It states on Page Two (2) that ''On January 16, 1931, relator pleaded guilty . . .'' but on the next page it makes much of the fact that ''Relator in his petition [fol. 33] makes no averment that he was impaired mentally at the time of the entry of his pleas on February 18, 1931.''

(c) It makes much of the fact that ''Relator in his petition makes no averment that he was impaired mentally at the time of his pleas . . .'' and on the same page belittles ''his petition that he was a young irresponsible boy . . .'' which is supported by the record of the Psychology Department of this Institution as cited in the eleventh paragraph of his brief.

(d) It attempts to minimize his allegations regarding his mental condition in 1931, by reason of fact that, ''His present mental capacity is indicated by his signed affidavit to the comprehension and legality of the brief filed in this Court.''

(e) It states that his petition was filed ''On October 11, 1949,'' but it makes no attempt to explain what transpired between June and October, or as to who violated the State and Federal laws by preventing his petition from being filed in June, 1949.

Further, if your petitioner pled guilty on January 16, 1931, as held by the Superior Court and not on February 18, 1931, the act of the Court in imposing sentence on the indictment (attached hereto) on February 18, 1931, in the absence of any order postponing, deferring, or suspending sentence during the January Term of Court, was without authority of law.

Com. ex rel. Micholetti v. Ashe, 359 Pa. 542.
Com. ex rel. Boyer v. Ashe, Docket No. 1576 (Superior Court) Opinion Filed February 18, 1949.

[fol. 34] Wherefore, your petitioner prays that your Honorable Court grant his petition so that he be not de-

prived of his constitutional rights, and so that he be not illegally restrained and deprived of his liberty.

And he will ever pray, etc.

Dominic Palmer, Petitioner.

Duly sworn to by Dominic Palmer. Jurat omitted in printing.

[fol. 35] INDICTMENT

IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY FOR THE COUNTY OF ALLEGHENY, OF JANUARY SESSIONS, A. D. 1931

ALLEGHENY COUNTY, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, do present, that Dominici Palmer, Steve Conti and Clifford Mason, late of the County aforesaid, on the eighteenth day of December in the year of our Lord, one thousand nine hundred and thirty in the County aforesaid, and within the jurisdiction of this Court, being then and there armed with offensive weapons, to-wit; revolvers, with force and arms, in and upon one David Brinn feloniously did make and assault, and did then and there feloniously beat, strike and ill use the said David Brinn and do violence to said David Brinn with intent then and there to feloniously rob the said David Brinn and the sum of twenty dollars, lawful money of the Government of the United States, of the goods, moneys, chattels and property of the said David Brinn, from the person of the said David Brinn, feloniously did rob, seize, steal, take and carry away, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 35a] And the inquest aforesaid, upon their oaths and solemn affirmations aforesaid do further present, that the said Dominic Palmer, Steve Conti and Clifford Mason, afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, the goods, moneys, chattels and property aforesaid, by some person whose name is

to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said Domenic Palmer, Steve Conti and Clifford Mason, then and there, well knowing the goods, moneys, chattels and property last mentioned, to have been feloniously stolen, taken and carried away) contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Andrew T. Park, District Attorney for Allegheny County.

Sworn by me, C. M. Leidy, Foreman.

Test Pro Respub.: Bernard Kirley, David Brinn, John Bradley, William Ruppert, Peter Rosella, Frank Shrne, Edward Sweeney, Harvey Conners, Oscar Freund, Nuncie Marino, William Fullerton, M. Terner, Norman Amdur, Albert Good, John Barrett.

[Endorsed:] O & T. No. 23. January Sessions, 1931. Commonwealth vs. Dominick Palmer, Steve Conti, Clifford Mason. Indictment: 1st Count, Robbery. 2nd Count, Receiving Stolen Goods. Prosecutor, Bernard Kirley. On January 9, 1931. True Bill. C. M. Leidy, Foreman. The Defendpant, plead guilty as to Dominick Palmer. May 7th, 1931 Deft. pleads non cul et de hoc. Dist. Atty. similiter issue joined as to Steve Conti.

And now February 18, 1931, Defendant sentenced to pay a fine of 6¼ cts., to the Commonwealth. Pay costs of prosecution; and undergo an imprisonment of not less than 5 years or more than 15 years in the Western Penitentiary and stand committed. To begin at the expiration of sentence at No. 24 January Term 1931 as to Dominic Palmer.

Not Guilty as to Steve Conti.

February 3, 1936 at request of prosecutor; made in Open Court and upon motion of District Attorney, a nolle prosse allowed on payment of costs of prosecution by County by reason of no evidence as to Clifford Mason.

From the Record:

Attest: John J. McLean, Clerk of Courts.

[fol. 36] INDICTMENT

IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY FOR THE COUNTY OF ALLEGHENY, OF JANUARY SESSIONS, A. D. 1931.

ALLEGHENY COUNTY, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Alleghony, upon their oaths and solemn affirmations, respectively, do present, that Dominic Palmer, Steve Conti and Clifford Mason, late of the County aforesaid, on the eighteenth day of December in the year of our Lord, one thousand nine hundred and thirty in the County aforesaid, and within the jurisdiction of this Court, being then and there armed with offensive weapons, to-wit: revolvers, with *with* force and arms, in and upon one Peter Rosella feloniously did make and assault, and did then and there feloniously beat, strike and ill use the said Peter Rosella and do violence to said Peter Rosella with intent then and there to feloniously rob the said Peter Rosella and of the goods, moneys, chattels and property of the said, from the person of the said, feloniously did rob, seize, steal, take and carry away, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania

[fol. 37] And the inquest aforesaid, upon their oaths and solemn affirmations aforesaid do further present, that the said afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, the goods, chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said then and there, well knowing the goods, —, chattels and property last mentioned, to have been feloniously stolen, taken and carried away) contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro Respub: Bernard Kirley, Peter Rosella, John Bradley, William Rupert, David Brinn, Frank Shine, Ed-

ward Sweeney, Harvey Conners, Oscar Freund, Nuncie Marino, William Fullerton, M. Terner, Norman Amdur, Albert Good.

Andrew T. Park, District Attorney for Allegheny County.

Sworn by me C. M. Leidy, Foreman.

And now February 18, 1931. Defendant sentenced to pay a fine of 6¼ cts. to the Commonwealth. Pay costs of prosecution; and undergo an imprisonment of not less than 5 years or more than 15 years in the Western Penitentiary and stand committed as to Dominic Palmer.

Not guilty as to Steve Conti.

And now February 3rd, 1936, at request of prosecutor; made in Open Court and on motion of District Attorney a nolle prosse allowed on payment of costs of prosecution by County by reason of not sufficient evidence to sustain a conviction as to Clifford Mason.

From the Record. Attest:

John J. McLean, Clerk of Courts.

[Endorsed]: O & T. No. 41. January Sessions, 1931. Commonwealth vs. Dominic Palmer, Steve Conti, Clifford Mason, Indictment: 1st Count, Attempted Robbery. Prosecutor, Barnard Kirley. On January 9, 1931. True Bill. C. M. Leidy, Foreman. January 9, 1931. The Defendant, pleads guilty as to Dominic Palmer. May 7th, 1931, Deft. pleads non cul et de hoc. Dist. Atty., similtier issue joined, as to Steve Conti.

[fol. 38] IN THE SUPERIOR COURT OF PENNSYLVANIA, WESTERN DISTRICT

[Title omitted]

BRIEF FOR APPELLANT

[fol. 39] Statement of Questions to Be Argued

1. Where a prisoner is given a hearing before a Magistrate on a charge of burglary and enters a plea of guilty in open court under the belief that he is pleading guilty to that charge alone, may his plea be illegally appropriated to other un-read indictments on which no hearing was had?

(The Court below held yes.)

2. May a feeble-minded prisoner waive his right to a jury trial on indictments un-read by or to him, by entering a plea of guilty to an un-specified indictment?

(The Court below held yes.)

3. Does not the Constitution place the onus on the trial Judge to appoint counsel for an abnormal feeble-minded boy, or to advise him of his right to have counsel and to instruct or advise him of the serious consequences of his plea?

(The Court below held no.)

[fol. 40] History of the Case

This is an appeal from an order of the Court of Common Pleas of Allegheny County at No. 426 January Term, 1950-B. The order which was entered on December 8, 1949, denied the appellant's application for a writ of habeas corpus.

(See opinion filed on December 8, 1949.)

The appellant, Dominic Palmer, under the date of February 18, 1931, was sentenced to a term of not less than ten years nor more than thirty years in the Western State Penitentiary at Nos. 23 and 24 January Sessions, 1931, in the Court of Oyer and Terminer of Allegheny County.

The certified copy of the indictments show that he was charged with Robbery and Attempted Robbery.

There is a notation on the back of the indictments showing that appellant's co-defendant Steve Conti was found not guilty on May 7, 1931, and that the indictments were nolle prossed as to Clifford Mason on February 3, 1936, because of the lack of evidence.

The notes of the testimony taken at the time of Conti's trial show that he was a patient in a State mental institution at the time of the averred crimes, and that the appellant was rebuked by the trial Judge when he testified and denied any knowledge of the charges for which he had been sentenced.

The Petition for Writ of Habeas Corpus filed on June 4, 1949, alleges that Palmer spent several years in Polk (because he was mentally abnormal), as well as several years in Morganza, and that after being taken in custody by the police authorities of the City of Pittsburgh on December

20, 1930, he was confined in No. 6 Police Station on Broad Street, Pittsburgh, and on December 21, 1930, he was taken to the Allegheny County Jail. (Paragraph 2.)

[fol. 41] The Petition alleges that Palmer was then taken from the County Jail to a courtroom where the District Attorney informed the Court, that the defendant wished to plead guilty and that in the matter of a minute, the foregoing sentence was entered after he answered "Yes" to the Court's query "Do you plead guilty to this charge?" (Paragraph 3.)

The Petition alleges that the appellant was advised by the police authorities, when he was taken in custody, that the charge against him was breaking and entering the Leaders Dry Goods Store on Frankstown Ave. (Paragraph 4) and that he was not aware of the fact that he had been held to a charge of Robbery or Attempt Robbery until he was in the Western State Penitentiary being examined by the Psychology Department of this institution (Paragraph 5).

The Petition alleges that Palmer was not advised of and was ignorant of the charges against him (Paragraph 7) because he was advised at the time of his hearing before Magistrate Papale that the charge against him was breaking and entering and that at no time thereafter was he advised or apprised of any other charge against him until he was in the penitentiary (Paragraph 6).

The appellant was not represented by counsel, nor offered counsel, or advised of his right to have counsel, and he expressly claims that the trial court lacked due process of law under the Fourteenth Amendment of the Constitution of the United States (Paragraph 8).

The records in the Psychology Department of this institution show that he was twenty-one years of age; that he had an I.Q. of 74; that he had a mental age of an eleven year old boy and was classified as feeble minded. The record shows that he was released on parole on September 19, 1947, [fol. 42] and that he was returned on April 1, 1949, for no other reason than because he lacked a place of employment.

The answers of the District Attorney of Allegheny County and Warden Stanley P. Ashe, have not been furnished to the appellant and he has no knowledge of what admissions or denials are set forth therein.

The Petition further alleges that the appellant plead guilty to an unspecified charge (Paragraph 10a); that his

plea to an unspecified charge was illegally appropriated to other unread indictments (Paragraph 10b); that this deprived him of his right to learn the nature of the accusation against him either before a Magistrate or in a courtroom (Paragraph 10c); that he was deprived of his right to face his accuser before a Magistrate or in a courtroom (Paragraph 10d); and that the record does not contain any authentic plea or written waiver of his right to a trail by jury (Paragraph 10e).

That founded as his Petition is that he plead guilty to entering the Leaders Dry Goods Store and larceny, the courts sentence is excessive.

Assignment of Errors

1. The Common Pleas Court erred in entering the following order:

> "December 8, 1949, after due consideration of the petition and the record in this case, the petition for Writ of Habeas Corpus is dismissed and the Writ is denied.
>
> By the Court
>
> "Eo die, exception noted to the Petitioner, and bill sealed.
>
> Harry Rowand, P.J."

[fol. 43]

Argument

This is a case where a feeble-mined boy was arrested on the roof of the Leaders Dry Goods Store in possession of socks and other articles of men's clothing. He was given a hearing before a Magistrate and was held for court. After several months in the County Jail he was brought to a courtroom where the District Attorney informed the court that "he wished to plead guilty". The trial judge held several pairs of socks in his hand and queried, "Do you plead guilty to this charge?" He answered "Yes" and was sentenced to thirty years imprisonment in the Western State Penitentiary.

No indictments were read to him or by him before he entered his plea or before he was sentenced.

No mental examination was ordered by the court and no motion was made for a mental examination because he

was not represented by counsel, nor offered counsel, or advised of his right to have counsel.

He later learned, from the Penitentiary authorities, that he was sentenced for Robbery and Attempted Robbery.

He was brought back to court to testify in co-defendant's trial and was rebuked by the trial Judge because he emphatically denied any knowledge of the crimes for which he had been sentenced.

Accordingly, the sole question involved in this proceeding is not only whether the trial court lacked due process of law in failing to appoint, or to offer, or to advise a feeble-minded boy of his right to have counsel, but whether a feeble-minded boy could legally waive his right to a jury trial in the absence of counsel to unread indictments by entering a plea of guilty to an unspecified indictment.

[fol. 44] It is the very essence of due process of law in a criminal prosecution that the accused be informed of the nature and cause of the accusation against him.

U.S. Const. Amend. VI., Pa. Const. Art. 1, Sec. 9.

In defining the essentials necessary to the protection of the accused as to waivers of Grand Jury indictment and guilty pleas, this Court, in Com. ex rel. Fagan v. Franicis, 53 Pa. Super. Ct. 278, said:

> "It is essential to the protection of the accused in his right to be informed as to the precise accusation to which he is to plead, and if convicted by his own confession, as to the precise crime and the lawful punishment prescribed therefore for which he is to be sentenced."

In Com. ex rel. Thor v. Ashe, No. 122 Misc. Docket, in an opinion filed on January 20, 1940, this Court said:

> "The relator denies that he ever pleaded guilty to the indictment in Cambria County and seems to have been consistent in this position, but his counsel does not press the point in this proceeding and accepts the record in the docket as verity. While it may not be required—and we are informed it is not the practice in Cambria County to enter pleas on the indictment, we approve of the practice, especially in cases where the defendant pleads guilty. In such cases the plea of guilty should be endorsed on the indictment and

> *signed* by the defendant, if unable to sign his *name or* his *mark* should be made and *witnessed* by the clerk. Such a course would eliminate all questions on the subject.

All of this makes sense. Surely the accused has the right to know why he is being sentenced if he is to be convicted by his own confession. And surely due process requires reading of the indictment if it is to be signed by the accused. It is equally clear that due process is violated if the all-important guilty plea is endorsed on an unread unsigned indictment. The day shall not come when the Commonwealth of Pennsylvania may proceed against one [fol. 45] of its citizens with impunity while depriving him of his right to be informed of the nature and cause of the accusation against him.

There is authority in the Act of 1895, May 15, P.L. 71, for the proposition that an accused person may plead guilty orally or in writing after reading the indictment.

There is also authority in the Act of 1935, June 11, P.L. 319, for the proposition that the accused may waive his right to a jury trial in writing and for any offense not punishable by more than ten years imprisonment.

No authority exists in law by which an accused person could waive his right to a jury trial in 1931 to unread indictments by pleading guilty to an unspecified indictment.

The right to be informed of the nature and cause of the accusation, and the right to a jury trial, is no less inherent or inalienable than the right to be present at the rendition of the verdict.

Com. ex rel. Milewski v. Ashe, 362 Pa. 48.

Surely this court would not hold that other steps, e.g. the acceptance of a guilty plea or the examination of witnesses, in the trial of a mentally deranged defendant may properly be taken without consent of his lawyer or in his absence from the courtroom. That would violate due process. So did the procedure in this case. As the Supreme Court of the United States said in Uveges v. Pennsylvania, 355 U. S. 437:

> "Some members of the Court think that where serious offenses are charged, failure of a court to offer counsel in State criminal trials deprives an accused of

rights under the Fourteenth Amendment. They are convinced that the services of counsel to protect the [fol. 46] accused are guaranteed by the Constitution in every such instance. (See Bute v. Ill., 333 U.S. 640, dissent, 677-79.) Only when the accused refused counsel with an understanding of his rights can the court disperse with counsel. (See Rice v. Olson, 324 U.S. 786, 788-89; Walker v. Johnston 312 U.S. 275, 286; Johnson v. Zerbst, 304 U.S. 485, 468). Others of us think that when a crime subject to capital punishment is not involved, each case depends on its own facts. (See Betts v. Brady, 136, U.S. 455, 462). Where the gravity of the crime and other factors—such as the age and education of the defendant, (See e.g. Wade v. Mayo, 334, U.S. 672, 683-84; DeMeerler v. Mich., 329 U.S. 663, 664-65; Betts v. Brady, supra at 472; Powell v. Ala., 287 U.S. 45, 51-52, 71) the conduct of the court or the prosecuting officials, (See e.g. Townsend v. Burke, 334 U.S. 736, 739-41; Smith v. O'Grady, 312 U.S. 329, 332-337) and the complicated nature of the offense charged and possible defenses thereto (See e.g. Rice v. Olson, 324 U.S. 786, 789-91) render criminal proceedings without counsel so apt as to result in injustices as to be fundamentally unfair, the latter group hold that the accused must have legal assistance, under the Amendment whether he pleads guilty or elects to stand trial, whether he requests counsel or not. Only a waiver of counsel, understandingly made, justifies trial without counsel."

Surely such a decision applies to a case where the record affirmatively shows that an uncounseled uneducated feeble-minded boy was tricked into entering a plea of guilty to unread indictments, plus a record showing his co-defendants were exonorated because they were represented by counsel and that he was rebuked by Conti's trial Judge because he denied guilt.

And surely such a decision applies where the Petition avers that he was not afforded counsel, nor advised of his right to have counsel, or in any way instructed by the Court as to the consequences of his plea, coupled, as in this case, with a Court opinion which admits the truth of the aver-

ment. As the United States Supreme Court, in Uveges v. Pennsylvania, supra, said:

[fols. 47-48] "Under either view of the requirements of due process, the facts in this case required the presence of counsel at petitioner's trial. He should not have been permitted to plead guilty without an offer of the advice of counsel in his situation. If the circumstances alleged in his petition are true, the accused was entitled to an adviser to help him handle his problems. Petitioner was young and in-experienced in the intricasies of criminal procedure when he pleaded guilty to crimes which carried a maximum sentence of eighty years. There is an undenied allegation that he was never advised of his right to counsel. The record shows no attempt on the part of the court to make him understand the consequences of his plea. Whatever our decision might have been if the trial court had informed him of his rights and conscientiously had undertaken to perform the functions ordinarily entrusted to counsel, we conclude that the opportunity to have counsel in this case was a necessary element to a fair hearing."

It is submitted by the appellant, that because he lacked counsel and an education, he has served, as a matter of law, nineteen years imprisonment for crimes which he did not commit.

Conclusion

Appellant submits that the Court of Common Pleas of Allegheny County violated the due process clause of the 14th Amendment in the opinion it rendered dissenting from the law as enunciated by the United States Supreme Court. Appellant should have been given an opportunity to prove his allegations in open court and he should be released from further confinement.

Respectfully submitted, —— ——

[fol. 49] No. 1726A Miscellaneous Docket. E Pa. 288 (West Dist.) Commonwealth of Pennsylvania, Ex Relatione Dominic Palmer, v. Stanley P. Ashe, Warden, State Penitentiary, Western District of Pennsylvania. Petition for Allowance of Appeal. E 9-28-50. Petition denied. Per Curiam.

[fol. 50] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 273, Misc.

ORDER—April 30, 1951.

On consideration of the motion for leave to proceed herein *in forma-pauperis* and of the etition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 707.

It is further ordered that the duly certified copy of the transcript of the proceedings below shall be treated as though filed in response to such writ.